

EXHIBIT 170

to Space Data's Opposition to Defendants'
Motion for Summary Judgment

1 KEKER, VAN NEST & PETERS LLP
ROBERT A. VAN NEST - # 84065
2 rvannest@keker.com
CHRISTA M. ANDERSON - # 184325
3 canderson@keker.com
MATTHEW M. WERDEGAR - # 200470
4 mwerdegarr@keker.com
EUGENE M. PAIGE - # 202849
5 epaige@keker.com
MATTHIAS A. KAMBER - # 232147
6 mkamber@keker.com
THOMAS E. GORMAN - # 279409
7 tgorman@keker.com
LEAH PRANSKY - # 302246
8 lpransky@keker.com
ANDREW S. BRUNS - # 315040
9 abruns@keker.com
633 Battery Street
10 San Francisco, CA 94111-1809
Telephone: 415 391 5400
11 Facsimile: 415 397 7188

12 Attorneys for Defendants
ALPHABET INC. and GOOGLE LLC

13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 SAN JOSE DIVISION

16 SPACE DATA CORPORATION,
17 Plaintiff,
18 v.
19 ALPHABET INC. and GOOGLE LLC,
20 Defendants.
21
22
23

Case No. 5:16-cv-03260-BLF

**DEFENDANTS' PATENT L.R. 4-2
DISCLOSURE OF PRELIMINARY
CLAIM CONSTRUCTIONS AND
EXTRINSIC EVIDENCE**

Judge: Hon. Beth Labson Freeman

Date Filed: June 13, 2016

Trial Date: August 5, 2019

JURY TRIAL DEMANDED

1 Defendants ALPHABET INC. and GOOGLE LLC (collectively “Google”), by and
2 through counsel, attach hereto and hereby discloses their preliminary claim constructions under
3 Patent Local Rule 4-2 for the terms identified by the parties for U.S. Patent Nos. 6,628,941 (“the
4 ’941 patent”), 9,678,193 (“the ’193 patent”), 9,632,503 (“the ’503 patent”), and 9,643,706 (“the
5 ’706 patent”).

6 Google anticipates that the parties will be able to narrow the list of terms to be construed
7 in the process of preparing a Joint Claim Construction Statement. To the extent necessary to
8 clarify the issues for the Court or otherwise avoid ambiguity or confusion, Google reserves the
9 right to address words contained with the identified terms separately from the terms as listed, if
10 addressing that such words separately will assist in the resolution of the parties’ claim-
11 construction disputes.

12 Google reserves the right to supplement or revise this list in response to the constructions
13 proposed by Space Data, or in response to any change in Space Data’s asserted claims or
14 infringement contentions. Google further reserves the right to rely on extrinsic evidence
15 identified by Space Data.

16 Google may rely on the expert testimony of Dr. Hansman and/or Dr. Aragon-Zavala in
17 support of Google’s indefiniteness arguments. Subject to Space Data’s proposed constructions
18 and the subsequent discussions between the parties, Google may also provide testimony from Dr.
19 Hansman and/or Dr. Aragon-Zavala to provide tutorial background, to explain the meaning and
20 subject matter of the asserted patent claims as they would be understood by those of ordinary skill
21 in the art at the time any patents were filed, to opine as to the proper construction of various claim
22 terms in light of the intrinsic and extrinsic evidence and/or the meaning of the term to one of
23 ordinary skill in the art, and to rebut Space Data’s positions. Although Google does not currently
24 intend to rely on expert testimony in relation to other claim terms, Google reserves the right to do
25 so in response to and in the event that Space Data relies on expert testimony for any other term.

26 Finally, Google reserves the right to address issues of indefiniteness either as part of the
27 claim construction process or at some later point in the case, depending on how many terms
28 remain for consideration following the parties’ meet-and-confer process.

1 Dated: January 23, 2018

KEKER, VAN NEST & PETERS LLP

3 By: /s/ Matthias A. Kamber

4 ROBERT A. VAN NEST
5 CHRISTA M. ANDERSON
6 MATTHEW M. WERDEGAR
7 EUGENE M. PAIGE
8 MATTHIAS A. KAMBER
9 THOMAS E. GORMAN
10 LEAH PRANSKY
11 ANDREW S. BRUNS

12 Attorneys for Defendants
13 ALPHABET INC. and GOOGLE LLC
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

DEFENDANTS' PRELIMINARY CONSTRUCTIONS AND EXTRINSIC EVIDENCE

I. The '941 Patent

Claim Element	Defendants' Proposal	Intrinsic Evidence	Extrinsic Evidence
"free floating"	"untethered and drifting along with existing wind current"	Figs. 1-5, 1:7-12; 4:62-65; 8-10; 9:6-7 10:61-67, 13:20-34, 18:52-54; 20:43-44, 24:52-53, 25:6-7, 25:36-37, 26:7-8, 26:50-51. <i>See also</i> File History citations for "without any longitudinal and latitudinal position control" (incorporated by reference).	
"constellation communications system"	"a plurality of small, lighter-than-air communications platforms spaced-apart and floating in the stratospheric layer of the Earth's atmosphere over a contiguous geographic area"	Abstract, Figs. 1, 2, 8, and 9; 1:7-12; 2:49-55; 3:45-49; 3:59-65; 4:2-4, 6:62-67; 8:18-21; 8:46-66; 9:30-36; 10:28-34; 11:25-29; 12:13-16; 12:45-52; <i>passim</i> in claims. File History: April 18, 2000 Office Action: Aug. 30, 2000 Statement Made in an Amendment: SD_003826, SD_003850	
"without any longitudinal and latitudinal position control"	"lacking horizontal propulsion or steering"	Figs. 1-5, 1:7-12; 4:62-65; 8-10; 9:6-7 10:61-67, 13:20-34, 18:52-54; 20:43-44, 24:52-53, 25:6-7, 25:36-	

Claim Element	Defendants' Proposal	Intrinsic Evidence	Extrinsic Evidence
		<p>37, 26:7-8, 26:50-51.</p> <p>File History: April 18, 2000 Office Action: Aug. 30, 2000 Statement Made in an Amendment: SD_003824 Fax from Examiner: SD_004265 File History: March 2, 2001 Office Action: Aug. 28, 2001 Interview Summary: SD_003664 File History: March 2, 2001 Office Action: Aug. 28, 2001 Amendment: SD_003596 File History: Feb. 28, 2002 Office Action: May 22, 2002 SD_003538 Reasons for Allowance: SD_004510</p>	
<p>“launched in a manner such that ... there is substantially a relative distance between said plurality of lighter-than-air platforms”</p>	<p>Indefinite:</p> <ul style="list-style-type: none"> • Mixed system and method claim violates <i>IPXL</i>. • “substantially a relative distance” is indefinite under <i>Nautilus</i>. <p>“launched in a manner” = “synchronized launching of a plurality platforms from spaced-apart geographical locations”</p>	<p>Figs. 1-5, 8-9; 3:59-4:4; 4:60-62; 7:60-63 8:18-21; 8:62-66; 9:7-10; 9:31-34; 9:41-47; 9:50-57; 10:12-21; 10:28-38; 10:53-67; 11:63-12:17; 12:36-52; 13:13-16; 13:45-47 14:6-23</p>	